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NO. 769

IN THE

Supreme Court of the United States

OCTOBER TERM 1968

CITY OF AMARILLO, AMARILLO INDEPENDENT SCHOOL DISTRICT, ET AL,

Petitioners,

versus

W. S. EAKENS and LLOYD KING,
Reorganization Trustees,

Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1968

CITY OF AMARILLO, AMARILLO INDEPENDENT SCHOOL DISTRICT, ET AL,
Petitioners,

versus

W. S. EAKENS and LLOYD KING,
Reorganization Trustees,
Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on August 27, 1968.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit in Amarillo, Amarillo Independent School District, et al, Appellants, v. W. S. Eakens and Lloyd King, Reorganization Trustees, Appellees, ____ Fed 2d ____, printed in Appendix B hereto - Pages A-1 through A-7.

The opinion of the United States District Court for the Northern District of Texas in the case of In the Matter of Herring Hotel Corporation Amarillo, Texas, In the Proceedings for the Reorganization of a Corporation, ____ F. Supp. ____, printed in the Appendix hereto - Pages A-8 through A-9.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 27, 1968. The jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254.

QUESTION PRESENTED

Whether the Circuit Court was correct in holding that the Bankruptcy Court had the legal power to make a redetermination of the taxes due to Petitioners without making a finding of the value of the property involved and without regard to the law of Texas on the subject of redetermining taxes due to taxing authorities.

STATEMENT

In a Chapter X Reorganization proceeding filed in the name of Herring Hotel Corporation, the Trustees on October 11, 1966, filed written objection to Claim No. 8, filed on behalf of the appealing taxing units, the objections urged being stated in this language:

"(1) The taxes are based upon an assessed

valuation which is so grossly excessive as to be void;

"(2) The taxes are based upon a set formula rather than upon the market value of the property, as is required by the Texas Constitution."

On April 14, 1967, the Referee and Special Master filed his Findings, Report and Recommendations, accompanied by a proposed form of order, the portion whereof pertinent to this case is in this language:

"Ordered that Claim No. 8, filed by the City of Amarillo, Amarillo Independent School District, Amarillo College District, and Amarillo Hospital District, which was filed for a total of $112,829.23 be allowed as follows:

"(1) The claim for taxes business personal:
filed for $9,477.17, allowed for $1,000.00

"(2) The claim for real estate ad valorem taxes:

Year	Filed	Allowed
1962	$31,426.09	$ 8,000.00
1963	29,436.53	8,000.00
1964	25,318.96	8,000.00
1965	17,170.48	17,170.48
Total Allowed		$41,170.48

"There having been an appearance made before the Board of Equalization with respect to 1965 taxes and with respect to 1966 taxes, the Court is without jurisdiction to consider the amount of these taxes.

* * * *

"The above action was taken in consideration of all the facts including but not limited to the finding by the Referee and Special Master, approved by the Court, that the taxes levied and claimed by the taxing authorities were excessive and improperly levied except with respect to the amounts herein allowed."

The Reorganization Trustees moved that the court approve and confirm the findings and recommendations of the Special Master and enter the order recommended by the Special Master.

The appealing taxing units served and filed a Petition to Review. On June 9, 1967, the court

(a) granted the motion of the Trustees,

(b) denied the relief sought by Taxing Units through their Petition to Review, and

(c) allowed the claims of Taxing Units only to the extent recommended by the Referee and Special Master.

The order of the District Court allows in its entirety the claim of the taxing units for the year 1965, the reason for this holding being stated in the order thus:

> "There having been an appearance made before the Board of Equalization, with respect to 1965 taxes and with respect to 1966 taxes, the Court is without jurisdiction to consider the amount of these taxes."

The Petitioners contend that, just as any relief to the Trustees for the year 1965 was barred by the appearance made before the Board of Equalization, so the relief granted the Trustees with respect to personal property taxes and with respect to real estate taxes for the years 1962, 1963 and 1964 was precluded by the failure of the Trustees to show that the Debtor availed itself of its right to appear before the Board of Equalization, or that it was denied the right to so appear, or that some other valid excuse existed for its failure to appear.

The Taxing Units gave notice of appeal to this court from so much of the June 9, 1967, order as

> "(a) disallows the claim of these taxing units for business personal taxes except with respect to $1,000.00 only of such claim,
>
> "(b) disallows the claim of these taxing units for real estate ad valorem taxes for the year 1962 except as to $8,000.00 of such claim,

"(c) disallows the claim of these taxing units for real estate ad valorem taxes for the year 1963 except as to $8,000.00 of such claim, and

"(d) disallows the claim of these taxing units for real estate ad valorem taxes for the year 1964 except as to $8,000.00 of such claim."

The Trustees have not appealed from so much of the June 9, 1967, order as allows in its entirety the claim of the Taxing Units for the year 1965.

The United States Court of Appeals, in affirming the decision of the District Court, held that the bankruptcy court had the power and authority to determine the assessed valuations of property on the tax rolls and redetermine the amount of the taxes due without considering or following the law of Texas that the validity of tax claims are to be determined by the law of Texas.

REASON FOR GRANTING WRIT

The decision of the court below decided an important question of Federal law which has not been, but should be, settled by this Court. The question is whether a federal bankruptcy court has the power and authority to deny or scale down the claim of the taxing units under the bankruptcy laws and the laws of the State of Texas regarding claims for taxes. It involves the fundamental concept of law that whether or not taxes are legally due and owing to a state, or a sub-

division of a state, depends upon the valid laws of the state.

Under the law of Texas, the receipt in evidence of the delinquent tax rolls make out a prima facie case entitling the Taxing Units to the approval of their claims in full, save as some valid defense thereto was proven, and imposing upon the Trustees the burden of proving such defense, if any, as they might have. *State v. Whittenburg,* 1954, 153 Tex. 205, 265 S.W. 2d 569, at page 572; *Sanford Independent School District v. Sanford,* 1958, 159 Tex. 155, 317 S.W. 2d 188, page 188; *City of Orange, Texas, v. Levingston Shipbuilding Co.,* 5 Cir. 1958, 258 F. 2d 240, at pages 241 and 242. In *State v. Whittenburg,* supra, at page 572, the taxpayer's burden was stated in this language:

> "The burden then rested on the respondents, if they expected to prevail, to go forward with proof which would meet the requirements of law for avoiding the valuation."

In *Arkansas Corporation Commission v. Thompson,* 1941, 313 U.S. 132, 51 S.Ct. 888, 85 L. Ed. 1244, the court says:

> "This case raises questions concerning the right and power of a federal bankruptcy court to revise and redetermine for state tax purposes the property value of a railroad (Missouri Pacific) in reorganization under § 77 of the Bankruptcy Act, 11 USCA § 205, the state (Arkansas) having already determined such value

through its own taxing officials and in accordance with the procedure prescribed by valid state legislation.

* * * * *

"It is thus obvious that the trustee's petition, which the bankruptcy court refused to dismiss, rested entirely upon the assumption that § 64 (a) (4) gave the bankruptcy court power to hold a completely new hearing in order to set its own value on the property, regardless of the value fixed by the state through its experts and specially constituted quasi-judicial agency.

"But we do not so interpret § 64 (a) (4), 11 USCA § 104 (a) (4). What § 64 (a) (4) relates to is 'taxes legally due and owing by the bankrupt.' And what that section further provides is that 'in case any question arises as to the amount or legality of any taxes, such question shall be heard and determined by the court; . . . ' Nothing in this language indicates that taxpayers in bankruptcy or reorganization are intended to have the extraordinary privilege of two separate trials, one state and one federal, on an identical issue of controverted fact - the value of the property taxed. Manifestly, whether or not taxes are 'legally due and owing' to a state depends upon the valid laws of that state. Ad valorem taxes depend upon a determination of value. The governmental

> function of fixing the value for tax purposes has rarely, if ever, been a judicial function."

In *Jaffke v. Dunham,* 352 U.S. 280, 77 S. Ct. 307, 1 L. Ed 2d 314, the Court said:

> "The claim in this case is that relevant admissible evidence established a constructive trust. Whether it did so or not is a question of Illinois law. The Court of Appeals, in the view it took of the case before it, did not reach this local question. On remand, that question too must be considered by the Court of Appeals."

In *Segal v. Rochelle,* 382 U.S. 375, 86 S. Ct. 511, 15 L. Ed. 2d 428, at page 435, the court placed emphasis upon the fact that an assignment of the claims at issue would have been enforced in equity in Texas in determining that the Debtor's loss-carryback refund claim based on losses in the year of bankruptcy passed to the Trustee.

It has consistently been held that in the exercise of its equitable jurisdiction, the Bankruptcy Court has the same power to hear the petition of a taxpayer as a state court of equity would have had, *Baumann v. Sheehan,* 3 Cir. 1944, 140 F. 2d 747. The court observed that if a Missouri court of equity would not have had the power to act, neither would the Bankruptcy Court, saying "If the rule were otherwise, it would make the bankruptcy court a super assessment tribunal over state taxing agencies, which broad power was not intended to be conferred by Congress."

In the Baumann case the taxpayer had failed to exhaust the administrative remedy provided by the local statute and the court held that until he had done that he had no right to maintain a suit in equity to enjoin enforcement of an improper assessment. That court looked to the state law to determine whether or not in equity the liquidating Trustee in the state court would have had a cause of action, and it found that he had no cause of action for two reasons: (1) Under the Missouri law to warrant an interference by a court of equity, fraud must have appeared in the very concoction, and fraud was not established by simply showing an overvaluation; and (2) The taxpayer and the liquidating Trustee had failed to exhaust the remedies available administratively. It was in connection with its holding that fraud was not established by simply showing an overvaluation that the court used the term "super assessment tribunal" to indicate the line between an unlawful assessment and a mere difference of opinion. In *In re B & L Farms Co.*, 1960, 184 F. Supp. 801, a case decided in the Southern District of Florida, the court said:

> "The rule seems to be well established that the Bankruptcy Court will not re-evaluate or re-assess the property of a bankrupt when the assessment of such property has been fixed by the local taxing authorities under provisions of state law which afford the representatives of the bankrupt estate adequate means consistent with due process to secure a judicial or quasi judicial review of the assessment . . ."

The 1966 amendment of the Bankruptcy Act does not change these principles. The provision that the court may determine the amount and validity of any unpaid tax is simply transferred from § 64 (a) (4) of the Bankruptcy Act, 11 USCC 104 (a) (4), to § 2 (a) of the Bankruptcy Act, 11 USC 11. This serves to remove any question whether the court's power exists in a Chapter X reorganization as well as in a liquidating bankruptcy, but it does not enlarge the power of the court otherwise.

The law of Texas upon the subject of ad valorem taxation may be analyzed thus. Article 7185, V.T.C.S. imposes upon the owner or his agent the burden of rendering property for taxation; and makes provision that, if the assessor is not satisfied with the valuation, he shall refer the same to the Board of Equalization. Article 7193, V.T.C.S., authorizes the assessor to make the assessment where there has been a failure on the part of the owner to render. Articles 7206 and 7212, V.T.C.S., clothe Boards of Equalization with the authority to increase or decrease assessments to whatever extent may be necessary to equalize the tax burden. These provisions of the statute are made applicable to Cities and School Districts by Article 1060a, V.T.C.S. *Hooks v. East Texas Pulp and Paper Company,* Tex. 1963, 369 S.W. 2d 308. Article III, Section 1, of the Charter of the City of Amarillo likewise makes express provision for the creation of a Board of Equalization; and Articles 2792 and 2815h, V.T.C.S., give express authority to School and College Districts to utilize the services of the City Tax Assessor and Collector. The sufficiency of the Texas tax scheme to give the

taxpayer a completely adequate remedy has been recognized by the Court of Appeals on at least three occasions. *Norton v. Cass County*, 5 Cir. 1941, 115 F. 2d 884, at page 886; *City of Orange, Texas v. Levingston Shipbuilding Company*, 5 Cir. 1958, 258 F. 2d 240, at page 241; *City of Houston v. Standard-Triumph Motor Company*, 5 Cir. 1965, 347 F. 2d 194, at pages 199 et seq.

The District Court, having reached the conclusion that the tax assessments were vulnerable to attack for certain years, undertook to pass judgment with respect to the dollar amount of taxes due without making any determination as to the value of the property upon which the taxes were levied for the years involved.

There is no authority for this procedure either in the federal law or in Texas law.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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By_____
of Counsel
Attorneys for Petitioners

CERTIFICATE

It is certified that copy of this petition has been furnished personally Mr. Robert Page Smith of the firm of Lumpkin, Watson & Smith, Bank of the Southwest Building, Amarillo, Texas, 79109, attorney for Respondents.

Respectfully submitted,

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By_____
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APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25139

CITY OF AMARILLO, AMARILLO INDEPENDENT SCHOOL DISTRICT, ET AL.,
Appellants,

versus

W. S. EAKENS and LLOYD KING,
Reorganization Trustees,
Appellees.

Appeal from the United States District Court for the Northern District of Texas

---

(August 27, 1968)

Before THORNBERRY and SIMPSON, Circuit Judges, and ATKINS, District Judge.

SIMPSON, Circuit Judge: We review on appeal an affirmance by the district court of an order entered by a referee in bankruptcy (Referee hereinafter) that reduced substantially the real and personal taxes

claimed by local taxing authorities (appellants hereinafter).

During a Chapter X proceeding for the reorganization of the Herring Hotel Corporation the reorganization trustees (Trustees hereinafter) filed objections to tax claims submitted by the appellants. The Trustees felt that the taxes should be disallowed; or in the alternative should be allowed only in part. In support of their objections, they asserted:

> (1) that the taxes were based upon an assessed valuation which was so grossly excessive as to be void;
>
> (2) that the taxes were based upon a set formula rather than being based upon the market value of the property as required by the Texas Constitution.

The appellants replied, urging that the objections be dismissed upon the ground that the bankruptcy court lacked the jurisdiction to deny or to scale down the claims.

The Referee concluded that the bankruptcy court had the power to redetermine the assessments for the years 1962, 1963 and 1964 because questions as to the amount or the legality of the taxes had not, prior to bankruptcy, been contested before or adjudicated by a judicial or administrative tribunal of competent jurisdiction. He concluded that the bankruptcy court lacked authority to redetermine the assessments for the years

1965 and 1966 as the Trustees had appealed assessments for those years to the Potter County Board of Equalization.[1]

The appellants petitioned the district court for review of the Referee's order. Following a hearing, the district court entered an order in conformity with the findings of the Referee.

We affirm.

---

[1]The appellants filed a claim for real and personal property taxes for the years 1962 through 1965. The claim for real property taxes amounted to $103,352.06 and the Referee allowed a total of $41,170.48. Four witnesses appeared for the Trustees on the question of the real property valuation of the hotel. Their estimates ranged from "no value" to $349,170. The tax assessor had valued the property at between $800,000 and $1,000,000 for the years in dispute. With respect to personal property taxes, a claim for $9,477.17 was filed and the Referee allowed $1,000.00. Thus, of the $112,839.23 claimed by the appellants, the Referee allowed amounts totaling $42,170.48. Curiously, the Referee made an erroneous addition of the allowed amounts which was picked up by the district judge in his order allowing claims (the order appealed from), and which neither party to the appeal has noted on brief. (See pages 61, 69 and 156 of the printed Record). The tabulation is as follows:

"(1) The claim for taxes business personal:
filed for $9,477.17, allowed for $1,0000.00

(2) The claim for real estate ad valorem taxes:

Year	Filed	Allowed
1962	$31,426.09	$ 8,000.00
1963	29,436.53	8,000.00
1964	25,318.96	8,000.00
1965	17,170.48	17,170.48
Total allowed		$35,170.48"

Obviously the allowance for real estate ad valorem taxes should total $41,170.48, not $35,170.48 as appears in the record. In affirming, we assume that the allowances for the respective years in question control, rather than the erroneous total.

Essentially we are confronted with the question of whether or not the bankruptcy court had the legal power to make a redetermination of the disputed tax claims. The appellants urge that the court did not have such power and suggest variety of grounds for the reversal of the order entered below. The arguments of the appellants to the contrary, we conclude that the bankruptcy court had jurisdiction in the matter and possessed the power to make a redetermination of the tax claims.

In 1966, in order to clarify the existing confusion relating to the general jurisdiction of the bankruptcy courts, Congress amended subdivision (a) of Chapter 2 of the Bankruptcy Act (11 U.S.C. §11), giving the courts of bankruptcy the jurisdiction to:

> "(2A) Hear and determine, or cause to be heard and determined, any question arising as to the amount or the legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction . . ."

By its plain terms this statute authorized the action taken by the Referee. He made a redetermination of the taxes due for the years 1962-1964 as the taxes for those years had not been contested. He refused to make a redetermination for 1965 and 1966, the years that the taxes were contested before the Potter County Board of Equalization.

The appellants have cited several cases to bolster their position but these cases are not persuasive when considered in light of the amendment to Chapter 2 of the Bankruptcy Act. We are referred to *Arkansas Corporation Commission v. Thompson,* 313 U.S. 132 (1941), where the Supreme Court held that a bankruptcy court could not make a redetermination of ad valorem taxes based upon property values fixed by a state through its specially constituted quasi-judicial agency. The facts of the *Arkansas* case differ from those of the case before us. In *Arkansas,* unlike the case at hand, the property assessment which gave rise to the disputed tax claim had been contested before a quasi-judicial agency of the state at a hearing in which the trustee in bankruptcy was a participant. In support of the proposition that bankruptcy courts are deprived of jurisdiction in those instances where appearances before boards of equalization or other such remedies provided by state law have not been exhausted, appellants cite *Baumann v. Sheehan,* 8 Cir. 1944, 140 F.2d 747. This and similar cases cited by the appellants for the same proposition are no longer appropriate in light of the changes wrought by the 1966 amendment.

We disagree with the appellants' conclusion that the 1966 amendment to Chapter 2 of the Bankruptcy Act leaves unchanged the principles enunciated in the cases they have cited. In actuality the effect of the amendment is to negate those decisions and to confer jurisdiction upon the courts of bankruptcy to hear and determine questions as to amount or legality of tax claims where said claims have not progressed to an adjudication before an administrative, judicial or

quasi-judicial body of competent jurisdiction. The amendment should be construed as a remedial effort, designed to alleviate an unfortunate situation in which many bankrupts and their creditors are placed. This situation is well-described in *Collier on Bankruptcy*:[2]

> "[D]ebtors financially involved are not always vigilant in the exercise of their rights to challenge tax claims or secure abatements; their managements may be inept, incompetent, uninterested, or dishonest; indeed, they may be under pressure to accept over-assesments which may aid in maintaining a credit standing or commercial rating."

The amendment, by authorizing redeterminations in those instances where the tax claim was never appealed, serves to protect creditors of the bankrupt from the bankrupt's lack of diligence or interest.

One further point raised on appeal is that the validity of the disputed tax claims should be determined according to the law of Texas. Article VIII, Section 1, of the Texas Constitution provides that all property, whether owned by natural persons or corporations, is to be taxed in proportion to its value, which is to be ascertained as provided by law. The term "value" as used in the Texas Constitution has been interpreted to mean "the reasonable cash market value" of the property. *State v. Whittenburg*, 265 S.W.2d 569 (1954). Thus, the Referee was bound to determine the amount

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[2] 6A Collier on Bankruptcy 183 (14th ed. 1965).

of the tax claim in light of the reasonable cash market value of the property. After hearing testimony on the question of the value of the Herring Hotel, he concluded that the assessments had been grossly excessive and he reduced the appellants' tax claim accordingly. This finding is amply supported by evidence contained in the record of the proceeding below. It follows that the order of the district court upholding the Referee's decision was right.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

IN THE MATTER OF

HERRING HOTEL CORPORATION
AMARILLO, TEXAS
IN THE PROCEEDINGS FOR
THE REORGANIZATION OF A CORPORATION
NO. BK-2-96

ORDER ALLOWING CLAIMS

On the 4th day of November, 1966, there came on to be heard before the Referee as Special Master the question of the allowability of certain tax claims; and a full hearing having been had by the Referee as Special Master; and the Referee as Special Master having recommended that this Order be entered; and

The Motion of the Trustees to confirm the Findings and Recommendation of the Referee and Special Master, and the Petition for Review of the Referee's Order filed by the taxing units, having been duly heard by the Court, and the Court finding that, for the reasons stated herein and in the Court's opinion dated May 31, 1967, that the following order should be entered; it is therefore

ORDERED that the Trustees' Motion to Confirm Findings and Recommendations of the Referee as Special Master and enter Order as recommended is granted; and the relief sought by the taxing units through their Petition to Review Referee's Order, is denied; and it is further

ORDERED that Claim No. 8, filed by the City of Amarillo, Amarillo Independent School District, Amarillo College District, and Amarillo Hospital District, which was filed for a total of $112,829.23 be allowed as follows:

(1) The claim for taxes business personal filed for $9,477.17, allowed for $1,000.00

(2) The claim for real estate ad valorem taxes:

Year	*Filed*	*Allowed*
1962	$31,426.09	$8,000.00
1963	29,436.53	8,000.00
1964	25,318.96	8,000.00
1965	17,170.48	17,170.48
Total Allowed		$35,170.48

There having been an appearance made before the Board of Equalization, with respect to 1965 taxes and with respect to 1966 taxes, the Court is without jurisdiction to consider the amount of these taxes.

IT IS FURTHER ORDERED that Claim No. 2, filed by the State of Texas and Potter County is allowed for $4,000.00.

The above action was taken in consideration of all the facts including but not limited to the finding by the Referee and Special Master, approved by the Court, that the taxes levied and claimed by the taxing authorities were grossly excessive and improperly levied except with respect to the amounts herein allowed.

ENTERED this the 9th day of June, 1967.

/S/ EMETT C. CHOATE
Senior United States
District Judge

APPENDIX B

The provision of the Bankruptcy Act material to a decision of this case is Subdivision (a) of Section 2 of the Bankruptcy Act (11 USC 11) as amended in 1966, reading as follows:

> "(2A) Hear and determine, or cause to be heard and determined, any question arising as to the amount or legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, and in respect to any tax, whether or not paid, when any such question has been contested and adjudicated by a judicial or administrative tribunal of competent jurisdiction and the time for appeal or review has not expired, to authorize the receiver or the trustee to prosecute such appeal or review;"

Texas statutes material to a decision of this case, all found in Vernon's Texas Civil Statutes, are these:

> Article 7185:
>
> "The owner or agent who is required under the laws of this State to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this State, or any officer out

of this State that is authorized by law to take acknowledgments of instruments for record in this State, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify the person from whom he received said list that he has referred said valuation to the board of equalization."

Article 7205:

"If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:

"1. The name of the owner; if unknown, say 'unknown'.

"2. Abstract number and number of certificate.

"3. Number of the survey.

"4. Name of the original grantee.

"5. Number of acres.

"6. The true and full value thereof.

"7. The number of lot or lots.

"8. The number of the block.

"9. The true and full value thereof.

"10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof."

Article 7206:

"Each commissioners court shall convene and sit as a board of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

"1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.

"2. They shall have power to correct errors in assessments.

"3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the sec-

ond-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.

"4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same if same be found correct.

"5. Whenever said board shall find it their duty to raise the assessment of any person's property, they shall order the county clerk to give the person who rendered the same written notice that they desire to raise the value of same. They shall cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.

"6. The assessors of taxes shall furnish said board on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed

> the oath required by law, together with the assessment of said person's property made by him through other information; and said board shall examine, equalize and correct assesments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved."

Article 7211:

"hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, to-

gether with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January First, 19 ____ (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the property is rendered."

Article 7212:

"The Boards of Equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix the proper valuation thereto, as provided for in the preceding Article, and when any Assessor in this State shall have furnished said Court with the rendition as provided for in the preceding Article, it shall be the duty of such Court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality, and quantity of such property, as well as the value thereof. Said Court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in the preceding Article, and their action in such case or cases shall be final; provided however, that if the Commissioners Court of any county who contracts with or

employs any individual, firm, or corporation to compile taxation data, the compensation of such individual, firm, or corporation may be paid on a pro rata basis from each county fund receiving any taxes derived from such valuation."

Article 7218:

"The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June or as soon thereafter as practicable, for their inspection, approval, correction or equalization. After said board shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his rolls or books of all the real and personal property listed to him, in the form and manner prescribed by the Comptroller."

Article 1060a:

"(a) All of the provisions of Title 122,[1] of the Revised Civil Statutes of Texas of 1925, be, and the same are made available insofar as same may be applicable and necessary to all school districts and municipal corporations organized under any general or special law of this State and which have power and authority to levy and collect their own taxes, and that each of such school districts and such municipal corporations shall have the benefit of all liens and remedies for the security and collection of taxes due them as is provided in said Title in the case of taxes due the State

and county, and as otherwise provided by the General Laws of this State in the case of taxes due incorporated cities and towns."

Article 2792:

"When a majority of the Board of Trustees of an independent district prefer to have the taxes of their district assessed and collected by the county assessor and collector, or by the city assessor and collector, of an incorporated city or town in the limits of which the school district, or a part thereof is located, or collected only by the county or city tax collector, same may be assessed and collected, or collected only, as the case may be, by said county or city officers, as may be determined by the Board of Trustees of said independent school district, and turned over to the treasurer of the independent school district for which such taxes have been collected. . . ."

Article 2815h, Section 7b (c):

"(c) When a majority of the Board of Education of such Junior College District prefer to have the taxes of their district assessed and collected by the County Assessor and Collector, or by the City Assessor and Collector of an incorporated city or town in the limits of which the Junior College District or a part thereof is located, or collected only by the County or City Tax Collector, same may be assessed and collected, or collected only, as the case may be, by said county or city officers, as may be determined by the Board of Education of said Junior College District, and turned over to the Treasurer of the Junior College District for which such taxes have been collected . . ."

CHARTER OF
THE CITY OF AMARILLO

The City of Amarillo is a home rule city. Article III, Section 1, of its charter covers the subject of taxation and reads in part as follows:

> "No irregularities in the time or manner of making or returning the City assessment rolls or the approval of such rolls, shall invalidate any assessment.
>
> "The governing authority of the City shall create a Board of Equalization, whose duties shall be to equalize the values of all property rendered for taxation in the City of Amarillo; prescribe the qualifications, compensation and number necessary to constitute said board, and enact all Ordinances necessary to regulate and control the equalization of values by such board."

SUPREME COURT, U. S.

JAN 4 1969

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1968.

No. 769

CITY OF AMARILLO, AMARILLO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners,

versus

W. S. EAKENS and LLOYD KING, Reorganization Trustees,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION.

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SUPREME COURT OF THE UNITED STATES

October Term, 1968.

No. 769.

CITY OF AMARILLO, AMARILLO INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners,

versus

W. S. EAKENS and LLOYD KING, Reorganization Trustees,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION.

Petitioners City and School Taxing authorities seek to avoid the plain language of the 1966 amendment to the Bankruptcy Act, which gives bankruptcy courts the power to "hear and determine . . . any question as to amount . . . of any unpaid tax." 11 USCA Section 11(a)(2A). The State of Texas and Potter County, apparently recognizing the plain meaning of this statute, did not appeal from the Referee's Order.

Even before enactment of the new statute, most courts had held that when a taxing authority filed a

claim, the bankruptcy court had the same power to pass on this claim as it had with respect to other claims. See e.g., *Henderson County vs. Wilkins,* 43 F.2d 670 (CCA 4, 1930); *In Re: White Star Refining Co.,* 74 F.2d 269 (CCA 5, 1934); *In Re: Lasky,* 38 F. Supp. 24 (N.D. Alabama 1941).

Approval of this position is indicated in *New Jersey vs. Anderson,* 203 U.S 483, 27 Sup. Ct. 137 (1906), where this Court holds:

> "Generally speaking, therefore, we think that a bankruptcy court has the power to redetermine tax claims in the exercise of its jurisdiction under the Chandler Act."

The reason for upholding the power of the bankruptcy court to pass on tax claims filed in a bankruptcy proceeding was clearly stated in *In Re: Chicago Railways Co.,* 175 F.2d 282 (CCA 7, 1949, cert. denied). The Court's language is:

> "It is fundamental of the bankruptcy law that he who invokes the aid of the bankruptcy court by offering a proof of claim and demands its allowance must abide by the consequences of that procedure . . . The whole process of proof, allowance and distribution is, shortly speaking, an adjudication of interest claimed in a res. It is nonetheless such because the claim is rejected in toto, reduced in part, given a priority inferior to that claimed, or satisfied in some way

> other than payment in cash. When the State becomes the actor and files a claim against the fund it waives any immunity which it might otherwise have had respecting the adjudication of the claim."

The only limitation upon this power was that where the state appellate processes had been utilized the bankruptcy court could not have another trial on the matter. *Arkansas Corporation Commission vs. Thompson*, 313 U.S. 131, 61 S. Ct. 888, 85 L.Ed. 1244 (1941).

The *Arkansas Corporation Commission* case, *Id.*, from which Petitioners quote and upon which they rely, was a railroad reorganization proceeding under Section 77 of the Bankruptcy Act. The precise issue before this Court was whether the reorganization court could determine questions concerning the amount of state taxes which had accrued during the bankruptcy proceedings, and which the Trustees had contested before the state quasi-judicial tribunal. The railroad had been in reorganization proceedings since 1933; the taxes involved were for the year 1939. The trustees had followed state statutory procedure in contesting the assessments—hence the court's language about "two trials." In the case at bar, no attempt was made to have the Court determine any issue concerning taxes accruing after bankruptcy, or taxes which were contested before any competent State tribunal. Indeed, the Referee correctly declined to reduce the taxes for the years in which there had been such contests.

Before the passage of the 1966 amendment to the Bankruptcy Act, some decisions questioned the authority of the bankruptcy court to pass upon the amount of taxes claimed to be due. See e.g., *Bauman vs. Sheehan,* 140 F.2d 747 (CCA 8, 1944); *In Re: B & L Farms,* 184 F. Supp. 801 (S.D. Fla. 1960). The 1966 amendment negates these decisions and expressly confers jurisdiction to hear and determine the amount of tax claims where the bankrupt has not pursued state appellate remedies.

A comparison of the new statute with the old one demonstrates the fallacy of Petitioners' position. The pertinent part of 11 USCA 104(a)(4) read, before the 1966 amendment, as follows:

> "*Section 104(2)*: The debts which are to have priority . . . shall be . . . (4) taxes which become legally due and owing by the bankrupt to the United States or to any state or subdivision thereof . . . and provided further that if any question arises as to the amount or legality of such taxes, such question shall be heard and determined by the Court."

The new Section 2-A (11 USCA Section 11(a)(2A)) enlarged the jurisdiction of the bankruptcy courts by giving them the power to:

> "Hear and determine . . . any question as to amount or legality of any unpaid tax, whether or not previously assessed, which has not prior

> to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction . . . " 11 USCA, Section 11(a)(2A).

A comparison of the foregoing provision demonstrates the enlargement of power granted by new Section 2-A. The priority provision of Section 104(a) was not, as erroneously stated by Petitioners, "simply transferred" to Section 2-A. It was not transferred at all. Section 2-A is completely new. The new section is contained in the jurisdiction section of the Bankruptcy Act rather than in the priority section.

In clarifying the power of the bankruptcy court to determine questions as to the amount of taxes, the new amendment codified the limitation which this Court stated in the *Arkansas Commission* case. The 1966 amendment provides that the bankruptcy court can determine questions as to the amount or legality of any tax "whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a competent judicial or administrative tribunal." 11 USCA Sec. 11(a)(2A).

If Congress had not intended that the bankruptcy court have the power to hear and determine questions as to the amount of the bankruptcy taxes when the assessments had not been contested, then the above quoted language of Section 2-A is completely meaningless. It is elementary that Congress is presumed to have intended its statutory language to have

meaning; and since the contention of Petitioners would render new Section 2-A meaningless, their contention cannot be accepted.

The Referee, as affirmed by the District and Circuit Courts, found that the tax claims filed by Appellants were, except to the extent allowed, grossly excessive. It is the law in Texas that a court of equity may intervene and set aside a tax based upon "grossly excessive" assessments, the "reasonable market value being the criterion for determining whether the assessment was 'grossly excessive' ". *Warren Independent School District vs. Southern Neches Corp.,* (Tex. Civ. App. 1965) 405 SW2d 100 at 103, writ ref. nre. at 404 SW2d 809 (Texas, 1966) following *State vs. Houser,* 138 Tex. 28, 156 SW2d 968 (1941); See also *Rowland vs. City of Tyler,* (Tex. Com. App. 1928), 5 SW2d 756 citing *Lively vs. MKT Ry. Co.* 102 Tex. 545, 120 SW 852 (1909); *City of El Paso vs. Howze,* (Tex. Civ. App. 1923) 248 SW 99; *Porter vs. Andrews,* (Tex. Civ. App. 1923) 253 SW 870; 54 Tex. Jur. 2d 295 et seq., and cases cited.

Therefore, the issue before the Referee was whether the taxes were based upon excessive assessments.

The taxing authorities assessed the bankrupt's forty-year-old, non-air-conditioned hotel at nearly $1,000,000. The credible evidence showed a value of between $0 and $350,000 (R. 123; 134-135; 145-146).

The Trustees further produced evidence that the personal property was worth, for the years concerned, little or no value (R. 135-136); or $12,000 (R. 122). The taxing authorities produced no independent evidence as to value, but relied solely upon the testimony of the Assistant Tax Collector. The grossly excessive nature of the over $1,000,000 assessment is immediately apparent, and was properly acted upon by the Referee and the District Court, and was correctly affirmed by the Circuit Court.

Both the Referee and the District Judge found that the taxes claimed were, except to the amount allowed, excessive, and this finding is amply supported by the evidence as well as by the failure of the taxing authorities to produce any independent evidence as to value.

The determination of the weight to be given to the evidence on value is peculiarly within the fact finding province of the Referee especially when adopted by the District Court. It is fundamental bankruptcy law—overlooked by Appellants—that the determination of the Referee, when upheld by the district court is entitled to every reasonable presumption in its favor. *In Re: Murray,* 92 F.2d 612 (CCA 7, 1937); *In Re: Rafds Enterprises,* 297 F.2d 505 (CCA 7, 1962); *United States vs. 44.00 acres of Land,* 234 F.2d 410 (CCA 2, 1956) Cert. Den.; Rule 52(a) F.R.C.P.; *Stonega Coke and Coal Co. vs. Price,* (CCA 4, 1939), 106 F.2d 411, Cert. Den.; 308 U.S. 618, 60 S. Ct. 263, 84 L.Ed. 516; *Transportation Insurance Company*

vs. Hamilton, (CCA 10, 1963) 316 F.2d 294. Remington on Bankruptcy (6th Ed. Vol. 8, p. 334), and the many cases therein cited.

State law clearly has nothing to do with the weight which Rule 52 F.R.C.P. requires to be given to the determinations of the Referee when accepted by the District Court. *London vs. Trortino Bros., Inc.,* (CCA 4, 1962) 301 F.2d 116.

The Referee, in his proposed order forwarded to the District Judge, included a finding that action was taken "in consideration of all the facts, including but not limited to the findings by the Referee and Special Master, approved by the Court, that the taxes levied and claimed by the taxing authorities were excessive and improperly levied except with respect to the amounts herein allowed" (R. 60-61). This finding was incorporated by the District Judge in his order (R. 155-156).

This finding, and the opinion of the District Court (R. 150) make it clear that the Referee and the District Court found that the valuation placed by the taxing authorities upon the old hotel was excessive and the proportion by which the claims were reduced shows the extent of the overvaluation.

The taxing authorities made no objection to the form of this order, nor did they make any motion to amend the findings, in accordance with Rule 52(c) F.R.C.P. The Referee's action and the findings

quoted above, as well as in the transcript of the evidence heard by the Referee, reflect the finding that the valuation of the property was excessive in proportion to the amount by which the Referee reduced the tax claims. If the taxing authorities had any objection to the form of the findings or order, they should have made it known to the Referee It is too late to make this complaint now. *Kennedy vs. United States,* (CCA 9, 1940) 115 F.2d 624.

> "Concurrent findings of fact by the Referee in bankruptcy and district judge will not be set aside on appeal on anything less that demonstration of plain mistake." *In Re: Borman & Co.* (CCA 6, 1965) 343 F.2d 125.

There has been no mistake in this case.

The opinion of the District Court makes it abundantly clear that the Court and the Referee reduced the taxes because the valuations asserted by the taxing authorities were excessive. The district court's opinion (Appendix A hereto) expressly so states, in the following languag :

> "Three issues are presented for determination: (1) whether the reorganization Court has jurisdiction to examine and determine the amount of legality of the taxes assessed against the debtor; (2) whether the assessments against the debtor were grossly excessive and may be corrected, and; (3) whether the trustees may at this time challenge the assessments . . ." (R. 150.)

"The Court is of the opinion that the referee acting as a special master proceeded upon credible evidence, indeed upon the far greater weight of the evidence, to make an equitable readjustment of the tax claims, which were grossly excessive as well as arbitrary.

"From the record it is abundantly clear that the assessments of the property violated the 'reasonable cash market value' directions of the Texas Constitution and its statutes because:

(a) They were made upon an arbitrary basis ignoring cash market value; they were confused with assessors' formulas which plainly had little relation to actual value.

(b) They departed so far from actual cash value that the discrepancy could not be attributed to differences of opinion which might exist between reasonable men.

(c) They would plainly result in confiscation and great loss to the creditors if permitted to stand . . ." (R. 153.)

The substance of this case is the taxing authorities' attack upon power given to the bankruptcy Court by new Section 2-A of the Bankruptcy Act to "hear and determine . . . any question as to amount or legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial tribunal of competent jurisdiction".

The taxing authorities contend (at page 5 of their application) that the meaning of the statute is that the appearance by the Trustees before the equalization board prevents the Referee from passing on the tax claim, and that failure to appear before that board with respect to the taxes for 1962, 1963 and 1964 deprived the bankruptcy Court of jurisdiction to pass on claims for those years. In other words, say Petitioners, the Referee could not pass upon 1965 taxes because they *had* been contested, and the Referee could not pass on 1962, 1963 and 1964 taxes because they *had not* been contested. This fallacy is at the heart of Petitioners' case; it was correctly rejected by all courts below and should, it is respectfully submitted, be rejected by this Court.

CONCLUSION.

The Referee, the District Court, and the Circuit Court have correctly disposed of this case. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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I hereby certify that a copy of this Brief has been furnished to attorneys of record for Appellants as follows:

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APPENDIX.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, AMARILLO DIVISION.

IN THE PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION—No. BK-2-96.

IN THE MATTER OF:
HERRING HOTEL CORPORATION
AMARILLO, TEXAS.

OPINION ON VALIDITY AND AMOUNT OF TAX CLAIMS.

This cause came on before me upon the trustee's Motion to Confirm the Findings and Recommendations of Special Master and Enter Order as Recommended, and upon the Petition to Review Referee's Order filed by the taxing units, City of Amarillo, Amarillo Independent School District, Amarillo College District and Amarillo Hospital District. The court has studied the record in this cause, heard arguments of counsel, and considered the memoranda of law filed by the trustees and the taxing units.

Three issues are presented for determination: (1) whether the reorganization court has jurisdiction to examine and determine the amount of legality of the taxes assessed against the debtor; (2) whether the assessments against the debtor were grossly excessive and may be corrected, and; (3) whether the trustees may at this time challenge the assessments.

1.

Any previous doubt as to a reorganization court's jurisdiction in this type of case should be set at rest by the July 5, 1966, amendment to section 2A of the Bankruptcy Act, 80 Stat. 270, 11 U.S.C.A. §11 (2A), 1966 Cumulative Annual Pocket Part. The Statute now provides that courts of bankruptcy are invested with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title to

> Hear and determine, or cause to be heard and determined, any question arising as to the amount or legality of any unpaid tax, whether or not previously assessed, which has not prior to bankruptcy been contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, and in respect to any tax, whether or not paid, when any such question has been contested and adjudicated by a judicial or administrative tribunal of competent jurisdiction and the time for appeal or review has not expired, to authorize the receiver or the trustee to prosecute such appeal or review.

This section of the Bankruptcy Act is applicable to Chapter X proceedings by virtue of 11 U.S.C. §502. This court, therefore, does have jurisdiction to pass upon the legality and amount of the taxes asserted against the debtor.

To hold otherwise would leave the debtor's estate open to whatever claim the taxing authorities choose to make, ignoring the necessities of reorganization, and giving the tax claimants a preference of treatment over other creditors nowhere justified by the Act or its purpose. 6 A Collier, Bankruptcy ¶9.07 at 182 (1965).

2.

Under Texas law, and as a general rule, grossly excessive assessments may be attacked and set aside. See *Warren Independent School District v. Southern Neches Corp.*, 405 S.W. 2d 100 (Tex. Civ. App. 1965), *error refused*, 404 S.W. 2d 809 (Tex. 1966); *Feldman v. Bevil*, 190 S.W. 2d 157 at 159 (Tex. Civ. App. 1945). Property is to be valued for purposes of taxation at its reasonable cash market value. Texas Constitution, art. 8 §1; *Rowland v. City of Tyler*, 5 S.W. 2d 756, 760 (Tex. Com. App. 1928); *Harlingen Independent School Dist. v. Dunlap*, 146 S.W. 2d 235, 237 (Tex. Civ. App. 1940) (error refused); *Whelan v. State*, 282 S.W. 2d 378, 380 (Tex. 1955).

The evidence submitted to the referee as special master shows that the reasonable cash market value of the Herring Hotel (land, building, and contents) for the years 1962 through 1965 was between $60,000 and $325,000. This range was established by the testimony of the several expert witnesses. Undisputed testimony was before the referee that the ancient hotel would require approximately a million

dollars and added land in order to modernize it for competition on a profitable basis with other hotel operations, and that the property was not saleable, even at a figure of $300,000. There was plausible testimony that the hotel furnishings, with the exception of some new furnishings added by the trustees, had no value.

The value of the real property for tax purposes was assessed between $846,000 and $598,000 and the value of the personal property was assessed at approximately $100,000 for the years 1962 through 1965. There was testimony seeking to support these assessments of this forty-year-old hotel property on the basis of square footage and replacement cost, and arbitrary reductions of that cost by percentage figures arrived at, for the most part, in an arbitrary fashion.

The court is of the opinion that the referee acting as a special master proceeded upon credible evidence, indeed upon the far greater weight of the evidence, to make an equitable readjustment of the tax claims, which were grossly excessive as well as arbitrary.

From the record it is abundantly clear that the assessments of the property violated the "reasonable cash market value" directions of the Texas Constitution and its statutes because:

(a) They were made upon an arbitrary basis ignoring cash market value; they were confused with

assessors' formulas which plainly had little relation to actual value.

(b) They departed so far from actual cash value that the discrepancy could not be attributed to differences of opinion which might exist between reasonable men.

(c) They would plainly result in confiscation and great loss to the creditors if permitted to stand.

3.

The referee was correct in not reducing the amount claimed for 1965 taxes. The trustees went before the Board of Equalization in 1965 and 1966, and took the matter no further. Therefore, the amounts of these assessments are final in these proceedings.

As to the prior years, however, the trustees were not involved in the assessment process for 1962, 1963, and 1964. The debtor's failure to appear before the Board of Equalization does not prevent the trustees, whose standing is that of a judgment creditor armed with process, from challenging these grossly excessive assessments, to protect the interests of the creditors.

CONCLUSION.

The trustees' Motion to Confirm Findings and Recommendations of Special Master and Enter Order As Recommended is accordingly granted, and the relief sought by the taxing units through their Petition to Review Referee's Order is denied. Settle order.

DONE AND ORDERED this 31st day of May, 1967.

EMETT C. CHOATE,
Senior United States District
Judge.

cc: Lumpkin, Watson & Smith

Gibson, Ochsner, Harlan,
Kinney & Morris

Underwood, Wilson, Sutton,
Heare & Berry